

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Wendy L. Welshans

Serial No. : 10/711,284

Filed : September 8, 2004

Atty. No : 65,235-004

Title : METHOD AND HOUSING ASSEMBLY FOR FARMING MEMBERS
OF THE PHYLUM ARTHROPODA**RECEIVED
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JUN 03 2005

Art Unit : 3643

Examiner : Nguyen, Son T.

CERTIFICATE OF FACSIMILE

I hereby certify that the attached correspondence is being transmitted by facsimile to the United States Patent & Trademark Office to fax number (703) 872-9306 on June 3, 2005


Anne L. Kubit**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner of Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Dear Sir:

In response to the Restriction Requirement dated, May 17, 2005, Applicant elects Group II with traverse. Applicant submits that the Office has failed to support a prima facie case that the examination of Group I and II is a serious burden. The office relies on conclusory statements without any appropriate explanation of specific classifications or separate status within the art. Applicant submits that the search and examination of the entire subject application can be made without serious burden.

The Office contends that restriction is proper, however, Applicant respectfully submits that there appears to be some confusion on the part of the Office as set forth in the Detailed Action. Specifically, the subject application is a United States Patent application, yet the Office has set forth the restriction requirement in paragraphs 1 and 2

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based upon the rules of the Patent Cooperation Treaty (PCT). As such, Applicant responds as if the proper United States Patent Law had been relied upon in making such a restriction requirement.

Under 35 U.S.C. §121, the Office has authority to restrict an application to one invention if the claims cover "two or more independent and distinct inventions." The statute, however, makes the Office's authority to restrict an application discretionary, not mandatory. The statute has been codified 37 C.F.R. §§ 1.141-1.146, similarly providing that a single application cannot as a matter of right claim two or more independent and distinct inventions.

The Office must satisfy two criteria in substantiating a proper restriction of the claims of an application. First, the Office must show that the application claims independent or distinct inventions, as required by both § 121 and the rules. Second, the Office must show that examining all claimed inventions in a single application would constitute a serious burden. See M.P.E.P. § 803. If either criterion is not satisfied, then the restriction is improper.

In paragraph 2 of the restriction requirement, the Office states that Group II does not have a food supply to perform the step of attracting a food supply as in Group I. Further, the Office states that Group I includes the step of covering the frames, which could be by placing a cloth or the like over the frames and is not necessarily the roof as claimed in Group II.

Referring to the food supply, Applicant directs the Office to claim 18 of Group II wherein a light source is claimed for drawing a food supply into the frame. Therefore, in order to examine the step of attracting a food supply in Group I, it would be necessary to search for the apparatus as claimed in Group II. Referring the step of covering the

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frames, Applicant directs the Office to claim 24 of Group II wherein a netting is claimed covering the frames. Therefore, in order to examine the step of covering the frames in Group I, it would be necessary to search for the apparatus as claimed in Group II. With reference to the step of harvesting in Group I, Group II is directed toward an assembly for farming, for which one purpose may be to harvest. As such, in order to properly examine the application, the Office would have to search each and every claim of Group II and therefore the search would not constitute a burden to search Group I and II give the substantial overlap between the claims.


Since the Office has failed to properly set forth their prime facie case that examination of the subject application cannot be made without a serious burden, Applicant respectfully request reconsideration of the outstanding Office Action and requests examination of all claims.

Applicant believes that no fees are due; however, if any become required, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account 08-2789.

Respectfully submitted

HOWARD & HOWARD ATTORNEYS, P.C.

June 3, 2005
Date


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